IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 6621 of 2003

Between:

Boda Kistaiah, s/o. Ramulu, Aged:28 years, R/o. Aroor, Valigonda Mandal, Nalgonda District.

..... PETITIONER

AND

1. The District Co-operative Officer, Nalgonda, Nalgonda District.
2. The General Manager, Central Co-operative Bank, Nalgonda District.
3. The Divisional Co-operative Officer, Bhovanagiri, Nalgonda District.
4. P.A.C.S. Aroor, represented by its person-in-charge committee, Aroor, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direct particularly one in the nature of mandamus, declaring the action of the third respondent in orally terminating the services of the petitioner w.e.f. 2-4-2003 by instructing him not to attend the duties from that date pursuant to instructions of the third respondent dated 17-2-2003 as totally illegal and without jurisdiction and violative of principles of natural justice and consequently direct the respondents to continue the petitioner with all consequential benefits.

Counsel for the Petitioner:MR.S.LAKSHMA REDDY

Counsel for the Respondents: GP FOR COOPERATION

The Court made the following :

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ORDER:

The petitioner is working as a Clerk in Primary Agricultural Cooperative Society, Aroor, who is the 4th respondent herein. It is the case of the petitioner that he was appointed in the 4th respondent- Society in accordance with the rules that were annunciated at the relevant point of time and his appointment is not in any way contrary to Section 116-C (1) of the Andhra Pradesh Cooperative Societies Act (for short 'the Act'). It is stated that the Divisional Cooperative Officer, Bhovanagiri, issued proceedings Rc.No.566/2002-C, dated 17-02-2003, stating that the Registrar of Cooperative Societies issued a circular dated 10-8-2002 in exercise of his powers under Section 4(2) of the Act not to make any appointments contrary to the provisions of Section 116-C of the Act and Rule 28(4) of the Andhra Pradesh Cooperative Societies Rules (for short 'the Rules') and their wages shall be in accordance with Section 116-C of the Act and the total expenditure shall not exceed 2% of the working capital or 30% of the gross profits in terms of actuals in a year, whichever is less and further directed to remove the services of all the persons, who have been appointed contrary to the said rule. It is stated that pursuant to the said circular, the petitioner was terminated from his service orally. It is the specific case of the petitioner that the 4th respondent's society's existing staffing pattern and the expenditure incurred towards the wages, pay and allowances is in conformity with the mandatory conditions laid down in Section 116-C(1) of the Act and Rule 28(4) (b() and Rule 36-B of the Rules. Without getting the staffing pattern approved, it is not open for the respondents to terminate the service of the petitioner as long as the pay and allowances paid to the employees of the society is not exceeding the working capital of 2% or 30% of the gross profit, whichever is less. Hence, the writ petition.

All the respondents filed counters admitting that the total expenditure of the pay and allowances payable to its employees is not exceeding 2% of the working capital or 30% of the gross profits.

Therefore, I am of the view that termination of service of the petitioner, without getting approval of the staffing pattern, pay and allowances in accordance with Section 116-C (1) of the Act, is illegal and unsustainable as the said termination is based only on the instructions of the Divisional Cooperative Officer and pursuant to the circular said to have been issued by the Commissioner.

Accordingly, the writ petition is allowed and the respondents are directed to continue the petitioner in service. But, however, it is open for the respondents to get the staffing pattern approved and if the pay and allowances payable to the petitioner exceeding the mandatory stipulations provided under Section 116-C(1)of the Act, Rule 28(4), Rule 36-B of the Rules, it is open to them to take appropriate action against the petitioner to terminate his service in accordance with law. No order as to costs.

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17-11-2004

To

1. The District Co-operative Officer, Nalgonda, Nalgonda District.
2. The General Manager, Central Co-operative Bank, Nalgonda District.
3. The Divisional Co-operative Officer, Bhovanagiri, Nalgonda District.
4. The person-in-charge committee, P.A.C.S. Aroor, Nalgonda District.
5. Two CCs to the Government Pleader for Cooperation, High Court Building, Hyderabad. (OUT)
6. Two C.D.copies.

Sj

That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice on this

Tuesday, the Sixteenth day of November, Two thousand and four.

REGISTRAR